

December 30, 1950  
Op. No. 50-282

Office  
Mr. Thad M. Moore  
Arizona State Tax Commission  
Capitol Building  
Phoenix, Arizona

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**ARIZONA ATTORNEY GENERAL**

Dear Mr. Moore:

We have before us your letter of December 29, 1950, in which you request the opinion of this office on the following question:

"Is a person who maintains a home and business and pays income tax in another State, who owns a home in the State of Arizona and occupies the home approximately four months during the winter season and does not engage in any business or business activities within the State, and does not vote within the State, and has not previously expressed any intention of becoming a resident, a resident as that term is used in relation to the payment of State Income Tax?"

It is our opinion that under the specific facts above set forth a person would not be a resident within the provisions of the Income Tax Law for the following reasons.

The phrase "residing within the state" is defined in Section 73-1504 ACA 1939 in this manner:

" \* \* \* 'residing within the state' shall mean or refer to a natural person domiciled within the state. A person living within the state, or who spends a period aggregating not less than nine (9) months of the income year, within the state, shall prima facie be deemed to be domiciled within the state. \* \* \* "

This does not mean, of course, that any person who lives in the state for a period less than nine months of the income year cannot become a resident. It does make "residing within the state" synonymous with domicile, so we must determine if a person would acquire a domicile within the state under the facts above set forth.

In 51 Am. Jur., on page 461, Section 447, it states:

"General rules applicable to other cases also determine whether a taxpayer by choice or by operation of law has changed his domicile or acquired a new or different one so as to subject

himself to taxation at the new or changed domicile, and relieved himself from taxation at the old one."

Thus, the general rules applicable to domicile will also govern in this instance.

The Arizona case of Hiatt vs. Lee, 48 Ariz. 320, 61 Pac. 2d 401, states:

"Section 1216, Revised Code of 1928, (Section 55-512, ACA 1939) gives certain rules for determining residence and while these rules apply specifically only to voters, yet we think they also set forth the general rule for determining residence whenever that may be an issue."

These rules, so far as applicable in this case, read as follows:

"1. That place is the residence of a person wherein his habitation is fixed, and to which whenever he is absent, he has the intention of returning;

\* \* \* \* \*

3. A person does not lose his residence who leaves his home to go to another county or state or foreign country for temporary purposes merely, with the intention of returning;

4. A person does not gain a residence in any county into which he comes for temporary purposes merely, without the intention of making such county his home;

5. If a person removes to another state with the intention of making it his residence, he loses his residence in this state; "

Section 24 of the Restatement of Conflicts, page 48, reads as follows:

"When a person who has capacity to acquire a domicile of choice has more than one home his domicile is in the earlier home, unless he regards the second home as his principal home."

In the recent Arizona Supreme Court case of Clark vs. Clark, decided December 14, 1950 the court said:

"In order that a person may become a domiciliary of the state he must have the necessary intention to make a home here, and perform some act to carry out such intention."

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The intention to remain in a locality, which is essential to domicile, has been variously referred to as "an intention to remain indefinitely, to remain permanently and to remain permanently and indefinitely." 28 C.J.S., page 16.

As has been stated in the various quotations, intention plays an important role in determining the domicile of a person. It is true that in some instances the requisite intent to establish a domicile may be shown more satisfactorily by the acts of a person rather than by his declarations. To put it in another way, sometimes a person's actions speak so distinctly and loudly that you can't hear what he says. In this instance, however, the owning of a home in Arizona and occupying the same approximately four months during the winter season, when there is no intention of becoming a resident, does not, we believe, make such person a resident under the provisions of our Income Tax Law.

Very truly yours,

FRED O. WILSON  
Attorney General

KENT A. BLAKE  
Assistant Attorney General

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NOTICE

No. 50-283 through 50-299 not used.